

UNITED STATES DISTRICT COURT  
FOR MASSACHUSETTS

2014-12756-WGY

David Proulx, Plaintiff

-v-

Massachusetts Partnership For  
Correctional Healthcare (MPCH),  
Lawrence Weiner,  
Maureen Atkins,  
Thomas Groblewski,  
Luis Spencer,  
Sean Medeiros, Defendants

All defendants in their official  
and individual capacities.

AMENDED CIVIL RIGHTS COMPLAINT  
[With A Jury Demand]

Preliminary Statement

The plaintiff in the above-captioned amended civil rights matter has been ordered by the Court, Gorton, D.J., to file this amended complaint within 60 days of June 25, 2014. The gravamen of plaintiff's complaint is that he suffers from ailments, one of which, Hepatitis-C, is life-threatening without proper treatment. The other illnesses, aggravated ventral hernia, hemmorhoids, back and shoulder pain, are serious medical needs which, if they continue to go untreated may result in life ending complications.

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

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For the exhaustion of administrative remedies the medical grievance procedure for Massachusetts Partnership For Correctional Healthcare (MPCH) was launched in July 2013 and plaintiff has fully complied with its protocol.

#### Jurisdiction and Venue

1. The Court has jurisdiction over this action under 28 USC ss. 1331, 1343(3)(4), 42 USC ss. 1983, and 28 USC ss. 2201, F.R.Civ.P. 57.
2. Venue properly lies in the District pursuant to 28 USC ss. 1391(b)(2) because the events giving rise to this cause of action occurred in Norfolk, Massachusetts, the Eastern District.

#### Parties

3. Plaintiff David Proulx is a prisoner at MCI-Norfolk, Box 43, Norfolk, MA 02056.
4. Defendant MPCH (the medical-care provider for the Department of Correction) has a business address of 50 Commerce Way, Norton, MA 02766.

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5. Defendant Lawrence Weiner, is the Assistant Deputy Commissioner of Correction, 50 Maple Street #3, Milford, MA 01757.
6. Defendant Maureen Atkins is the Health Services Administrator for MCI-Norfolk, Box 43, Norfolk, MA 02056.
7. Defendant Thomas Groblewski is the Statewide Medical Director for MPCH, 50 Commerce Way, Norton, MA 02766.
8. Defendant Luis Spencer is the Commissioner of Correction, 50 Maple Street #3, Milford, MA 01757.
9. Defendant Sean Medeiros is the Superintendent of MCI-Norfolk, Box 43, Norfolk, MA 02056.

Statement of Facts

11. Plaintiff Proulx has been diagnosed as having Hepatitis-C.
12. If the plaintiff does not receive medical care for Hepatitis-C he is more likely than not to die in prison.

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13. In 2004 the plaintiff was treated with Pegylated Ribarvirin Treatment (PRT).
14. The PRT did not help the plaintiff so the treatment was discontinued by the defendants.
15. If the plaintiff does not receive the new triple therapy approved by the Federal Government, his liver will become a Stage Four liver disease which requires a liver transplant.
16. The defendants do not perform/allow liver transplants based on the cost of \$500,000.00.
17. Rather than pay for a liver transplant, defendants prefer to allow the plaintiff to die.
18. Plaintiff has requested an updated Biopsy to ascertain damage to his liver since 2003.
19. Plaintiff has been diagnosed with Stage Three Cirrhosis of his liver which if untreated leads to Cancer of the liver.

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20. After plaintiff submitted medical grievances, letters from himself and others, talked to defendant Atkins, he was told treatment for his disease was not available.
21. There is no Infectious Disease Nurse-Provider at MCI-Norfolk.
22. The defendants' failure to treat the plaintiff has caused him substantial harm where he is in pain daily as the result of his untreated ailments.
23. The plaintiff, as a result of his Cirrhosis and Barrett's Disease is in constant fear of contracting liver cancer.
24. Defendants have not presented a clinical pathway for the plaintiff's treatment of Hepatitis.
25. Defendants are deliberately indifferent to providing a FibroSure test to measure fibrosis in plaintiff's liver, the results of which could be a range of 1-5, where 5 is the worst outcome.

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26. Plaintiff suffers from a herniated Belly-button which is very painful on a daily basis.
27. Plaintiff was approved by a surgeon at the Lemuel Shattuck Hospital for hernia surgery.
28. Doctor Mandalywala Dhansukhl diagnosed plaintiff for a hernia operation based on a prior need for a binder which plaintiff wore but no operation has occurred.
29. Plaintiff was told by the defendants that the surgery was "cosmetic," even though he is in pain from the hernia every day.
30. As a result of the hernia plaintiff suffers from nausea and vomiting on a regular basis, daily, where there are prolonged periods of extreme pain.
31. Defendants refused to perform the hernia surgery.
32. Plaintiff suffers with cramps, spasms, and neuropathy in his legs which causes him to be sleep-deprived and goes untreated by the defendants.
33. Defendants have denied surgery based on its cost.

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34. Defendant Atkins told the plaintiff the reason there would be no surgery for the correction of his hernia is that it costs too much money.
35. Plaintiff suffers with hemorrhoids since 2009.
36. Defendants have deliberately refused to treat the plaintiff for the ailment of hemorrhoids, claiming the materials for treatment are unavailable.
37. Defendant Atkins told the plaintiff to "just live with it," in reference to the hemorrhoids.
38. Defendant Atkins specifically refused to provide toilet paper, medical wipes, creams, etc., which made the plaintiff bleed and suffer all the more.
39. Plaintiff has been diagnosed as a diabetic but receives no treatment for this illness.
40. Plaintiff was diagnosed with Arthritis in his back and shoulders but receives no treatment for these illnesses.

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41. Defendant Atkins is responsible for the approval of all treatment for the plaintiff while he is at MCI-Norfolk.
42. Defendant Weiner personally oversees the operations of MPCH the contract provider to ensure compliance with the contract between MPCH and the Department of Correction (DOC).
43. Defendant Groblewski as the state-wide medical director for MPCH is personally involved in oversight of the medical staff who are employees of MPCH.
44. Defendant Spencer is by statute responsible for the care and custody of the plaintiff.
45. Defendants Atkins, Weiner, Groblewski, and Spencer maliciously and deliberately refuse to treat the plaintiff for his medical illnesses and diseases.
46. Defendants Atkins, Weiner, Groblewski, and Spencer do not care if the plaintiff dies from his diseases.
47. All the defendants have acted, and continue to act, under color of state law at all times relevant to this complaint.



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48. The plaintiff has submitted numerous medical grievances delineating his diseases, ailments, his pain and suffering.
49. On Information and belief, when a prisoner like the plaintiff files a medical grievance, the staff for the medical department calls the matter to the attention of those individuals responsible for the matter that the medical grievance concerns.
50. Defendants Atkins and Groblewski are responsible for arranging for specialized medical care outside the prison.
51. Knowing that the plaintiff is in great pain, defendants Atkins, Weiner, Groblewski, and Spencer have maliciously and sadistically ignored his suffering based on the cost of his treatment.
52. On information and belief, if the plaintiff is not promptly provided with treatment for his diseases as previously recommended by the doctors, he risks permanent disability, or worse.

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Claims For Relief

53. When the defendants denied the plaintiff any treatment for the Hepatitis-C, Cirrhosis, and Bartlett's disease they afflicted him with painful cruel and abusive punishment in violation of the Eighth Amendment.

[Complaint ¶¶11-25]

54. When the defendants failed to provide the newer, more effective HCV approved by the Food and Drug Administration they were deliberately indifferent to the plaintiff's good health and well-being based on expense of the drug and raises a substantial risk of further serious injury or death, in violation of the prohibition of cruel and unusual punishment imbued in the Eighth Amendment. [Complaint ¶¶11-25]

55. When the defendants Atkins, Spencer, Groblewski, and Weiner refused to arrange for hernia surgery after being told by the surgeon it was necessarily mandated treatment and is so obvious even a lay person would recognize the need for a doctor's attention, they forced cruel and unusual pain and suffering on the plaintiff in a subjective, deliberate manner contrary to the Eighth Amendment. [Complaint ¶¶26-35]

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56. When defendant Atkins refused to provide the plaintiff with medical wipes, toilet paper, and skin cream for his painful hemorrhoids she deliberately and maliciously violated the prohibition against cruel and unusual punishment prohibited by the Eighth Amendment. [Complaint ¶¶36-38]
57. The facts related above discloses the failures of the defendants Atkins, Weiner, Groblewski, and Spencer to properly respond to plaintiff's serious medical condition by failing to conduct an adequate examination and order the proper tests to properly treat plaintiff's diseases. [Complaint ¶¶39-52]
58. Because the defendants are deliberately indifferent to plaintiff's serious medical needs, shown by the pattern of conduct in refusing to treat him, they violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment by:
- a) delaying and denying access to medical attention for his serious medical needs where he is limited to the medical contract providers for the DOC.

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- b) plaintiff was denied access to qualified medical personnel to ascertain the progression of his Hepatitis-C, the growing size of the ventral hernia, and the threat of infectious disease from the chronic hemorrhoids.
- c) the defendants failed to inquire into the essential facts that are necessary to make a professional judgment, with no adequate examinations, failure to ask important and necessary questions, and the failure to perform necessary tests relevant for plaintiff's diseases.
- d) there have been consistent interference of any treatment by non-medical factors, where the staffing at MCI-Norfolk is so inadequate to provide treatment for the plaintiff and 1400+ other prisoners with whom plaintiff must compete.
- e) defendants have failed to carry out medical orders by qualified physicians who have diagnosed the plaintiff with serious medical need for treatment.

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f) because the plaintiff cannot obtain his own medical services he is entitled to be provided reasonably adequate medical care, at a level reasonably commensurate with modern medical science and of a quality acceptable with prudent professional standards;

which is cruel and unusual punishment under the Eighth Amendment, available to the State through the Fourteenth Amendment. [Complaint ¶¶11-38]

59. All of the above are symptomatic of a medical system whose responses to serious medical needs do not meet the criteria of due process to address medical complaints in a timely and substantive procedure to alleviate the pain and suffering caused by the defendants' subjective abrogation of sound medical protocols. [Complaint ¶¶11-38]

60. Because the treatment of prisoners like the plaintiff's medical needs are so clearly established for decades of due process determinations by opinions of the U.S. Supreme Court, Courts of Appeal, and local District

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Court, the deliberate ignoring of settled law by the defendants also violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Relief Requested

WHEREFORE, plaintiff requests that the Court grant the following relief:

A. Issue a declaratory judgment stating that:

1. The denial of medical care, or any treatment at all for the plaintiff's serious medical conditions by the defendants Atkins, Weiner, Groblewski, Spencer, and MPCH violated the plaintiff's rights under the Eighth Amendment to the United States Constitution and constituted what the Court will call "deliberate indifference."
2. That the defendant Atkins' actions in cancelling plaintiff's hernia surgery, labeling it as "cosmetic" violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
3. That the defendants Weiner, MPCH and Spencer in failing to institute a medically proper

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system which addresses the plaintiff serious medical needs without regard to expense, especially where his need is life-threatening without treatment, they have violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

B. Issue an injunction ordering defendants MPCH, Spencer, Weiner, Groblewski, and Atkins or their agents to:

1. Arrange for the proper examination of the plaintiff's chronic diseases under the current standards of medical care for 2014;
2. Order that his ventral hernia be operated upon as prescribed by the surgeon at the Shattuck Hospital, with no regard for the expense.
3. Order that the defendants conduct follow-up examinations and treatment for plaintiff's Hepatitis-C, his ventral hernia, and hemorrhoids.

C. Issue an injunction ordering defendants to provide medication for Hepatitis-C, cirrhosis, and Bartlett's Disease which are currently approved by the Federal Government.

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D. Award compensatory damages in the following amounts:

1. \$100,000.00 jointly and severally against defendants MPCH, Atkins, Spencer, Weiner, and Groblewski for the physical and emotional injuries caused by the lack of treatment of any kind, where if left alone without treatment, by a preponderance of evidence the plaintiff will surely die before his time.
2. \$10,000.00 jointly and severally against defendants Weiner, Spencer, and Atkins for the failure to administrate properly serious medical needs of the plaintiff by a longtime continuing violation of due process.
3. Award punitive damages against defendant Atkins who maliciously told the plaintiff his treatment for a ventral hernia was cosmetic and would not be performed, in the amount of \$20,000.00.

E. The plaintiff demands a jury trial on any disputed facts and on the award of damages.

F. Grant such other relief as it may appear that the plaintiff is entitled.



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Date: 8-4-14

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Proulx". The signature is fluid and cursive, with the first name "David" and last name "Proulx" clearly distinguishable.

David Proulx, Pro Se  
W40272 - Box 43,  
Norfolk, MA 02056

Verification of Complaint:

I, David Proulx, hereby swear under pains and penalties of perjury that I have read the complaint and the facts contained therein are true.